

RESOLUTION NUMBER R-294947

ADOPTED ON MAY 29, 2001

WHEREAS, San Diego Municipal Code section 22.0801, et seq., provides that the City Council shall permanently debar any bidder or contractor for any corrupt practices involving the administration or award of a City contract; and

WHEREAS, Southern California Underground Contractors, Inc., its divisions and organizational elements, its Affiliates, Jim Craig Jackson, and George Rogers Frost [SoCal], engaged in corrupt practices, as is more particularly set forth in City Manager's Revised Report No. 01-068 on file in the office of the City Clerk, which is incorporated herein, along with any and all documents referenced therein, by this reference; and

WHEREAS, the matter was set for a noticed public debarment hearing on May 22, 2001, SoCal was personally served notice of the hearing and was provided the opportunity to present evidence; and

WHEREAS, testimony having been heard, evidence from all interested parties having been submitted, and the City Council having fully considered the same; and

WHEREAS, SoCal presented written evidence, in the form of a thirty-one page letter to the Mayor and City Council members with attachments, to the City Council at approximately 4:00 p.m., on May 21, 2001; and

WHEREAS, on May 22, 2001, the public hearing was opened, oral testimony was given by both SoCal and the City Manager, and written evidence was submitted by citizens of the City of San Diego in the form of letters; and

WHEREAS, on May 22, 2001, the public hearing was closed and the matter was continued to May 29, 2001, on a vote of the City Council for further time to review the evidence and information, and to allow SoCal and the City Manager additional time to submit any additional deposition transcripts, factual information and arguments; and

WHEREAS, on May 22, 2001, the City Council found that any additional evidence SoCal or the City Manager wanted to submit to the City Council for its review should be submitted to the City Clerk no later than 4:00 p.m., May 24, 2001; and

WHEREAS, that pursuant to the 4:00 p.m., May 24, 2001, deadline, SoCal submitted a Supplemental Brief and the City Manager submitted a Memorandum to the Mayor and City Council as additional written evidence to the City Clerk for the City Council's review; and

WHEREAS, the matter was heard again on May 29, 2001, and the public hearing was reopened to allow SoCal to present additional evidence and the City Council having fully received and considered all the same; and

WHEREAS, the City Council, after review and consideration of all evidence, supports without reservation permanent debarment of SoCal; and

WHEREAS, although the City Council is certain that permanent debarment is warranted and proper, the City Council also adopted an alternate motion to impose a three year debarment in the event a reviewing court determined for any reason that permanent debarment was not warranted or proper; and

WHEREAS, as reflected in the transcription of the debarment hearing, the alternate motion is an expression of the City Council's desire that SoCal should be debarred to the maximum intent allowed under the San Diego Municipal Code, and the findings and conclusions adopted support the maximum debarment allowed; NOW THEREFORE,

BE IT RESOLVED, that pursuant to San Diego Municipal Code section 22.0801, et seq., and after reviewing all evidence and testimony, the Council of the City of San Diego hereby adopts the “Findings Regarding the Permanent Debarment of Southern California Underground Contractors, Inc., its divisions and organizational elements, its Affiliates, James Craig Jackson and George Rogers Frost”, Section II, “A”, 1 through 5; Section II, “B”, 1 through 5; Section II, “C”, 1 through 3; Section II, “D”, 1 through 3; and General Conclusion and Debarment Basis No. 5, Exhibit A [Permanent Debarment Findings]. These Permanent Debarment Findings are adopted and incorporated herein by this reference. Each of the Permanent Debarment Findings, individually and cumulatively, supports the permanent debarment of SoCal.

BE IT FURTHER RESOLVED, the Council for the City of San Diego finds, the unenforceability and invalidity or illegality of any one finding and/or conclusion for debarment set forth in Permanent Debarment Findings shall not render any other finding and/or conclusion unenforceable, invalid, illegal or insufficient to support a different finding or conclusion that SoCal has committed corrupt practices.

BE IT FURTHER RESOLVED, the Council for the City of San Diego finds, based upon the oral testimony and all other evidence submitted in this matter, that the permanent debarment of SoCal will prevent its continuing corrupt practices. As such, it is in the public interest, and it will protect the City by ensuring full and open competition by allowing the City to grant awards only to responsible contractors. This debarment is not for purposes of punishment.

BE IT FURTHER RESOLVED, that the Council for the City of San Diego finds, as a consequence of the Findings set forth in Exhibit A [Permanent Debarment], and all evidence and testimony presented, that SoCal is permanently debarred.

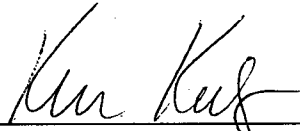
BE IT FURTHER RESOLVED, in the event a reviewing Court determines, for any reason, that SoCal's permanent debarment is not warranted or proper, that pursuant to San Diego Municipal Code section 22.0801, et seq., and after reviewing all evidence and testimony, the Council of the City of San Diego hereby adopts the "Alternate Findings Regarding the Three Year debarment of Southern California, Contractors, Inc., its divisions and organizational elements, its Affiliates, James Craig Jackson and George Rogers Frost", Section II, "A", 1 through 5; Section II, "B", 1 through 5; Section II, "C", 1 through 3; Section II, "D", 1 through 3; and General Conclusion and Debarment Basis No. 5 of Exhibit A [Alternate Debarment Findings]. These Alternate Debarment Findings are incorporated herein by this reference. Each of these findings, individually and cumulatively, supports the three year debarment of SoCal.

BE IT FURTHER RESOLVED, the Council for the City of San Diego finds, the unenforceability and invalidity or illegality of any one finding and/or conclusion for debarment set forth in the Alternate Debarment Findings, shall not render any other finding and conclusion unenforceable, invalid, illegal or insufficient to support a different finding or conclusion that SoCal has violated San Diego Municipal Code section 22.0803(a).

BE IT FURTHER RESOLVED, that the Council for the City of San Diego finds, in the event a reviewing Court determines, for any reason, that SoCal's permanent debarment is not warranted or proper, that the three year debarment of SoCal will prevent its continuing violations of San Diego Municipal Code section 22.0803(a). As such, it is in the public interest, and it will protect the City by ensuring full and open competition by allowing the City to grant awards only to responsible contractors. This debarment is not for purposes of punishment.

BE IT FURTHER RESOLVED, that the Council for the City of San Diego finds, if a reviewing Court determines, for any reason, that SoCal's permanent debarment is not warranted or proper, then as a consequence of the Alternate Debarment Findings set forth in Exhibit A, and all evidence and testimony presented, that SoCal is debarred for three years.

APPROVED: CASEY GWINN, City Attorney

By   
Keri Katz, Head Deputy City Attorney

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## EXHIBIT "A"

### FINDINGS

**PERMANENT DEBARMENT OF  
SOUTHERN CALIFORNIA UNDERGROUND  
CONTRACTORS, INC., ITS DIVISIONS,  
ORGANIZATIONAL ELEMENTS,  
ITS AFFILIATES, JIM CRAIG JACKSON  
AND GEORGE ROGERS FROST**

#### I. INTRODUCTION

The following Permanent Debarment Findings have been submitted by the City to be made by the Council of the City of San Diego for the permanent debarment of Southern California Underground Contractors, Inc., its divisions, organizational elements, its Affiliates, Jim Craig Jackson and George Rogers Frost (These individuals, the corporate entity and each and every subpart will hereinafter be referred to as "SoCal").

These Permanent Debarment Findings are based upon the debarment rehearing; the City Manager's Revised Report No. 01-068 and its attachments; the Administrative Record; all testimony, and evidence submitted at the hearing. Each of which, incorporated by this reference, sets forth four independent bases for the permanent debarment of SoCal. In addition, cumulatively the conduct reflects a pattern of corrupt practices. This pattern is a fifth basis upon which SoCal is debarred.

#### II. SOCIAL DEBARMENT FINDINGS

San Diego Municipal Code section 22.0801, et seq., requires that debarment be imposed as a sanction only in the public interest. Debarment is designed to protect the City by ensuring full and open competition by granting awards only to responsible contractors. The City Council may permanently debar any bidder or contractor for any corrupt practices involving the administration or award of a City contract.

SoCal has committed corrupt practices involving the administration or award of City contracts, as described in detail below. Each and every act, individually and jointly, is adequate ground(s) for permanent debarment of SoCal. The debarment of SoCal is in the public interest and for protection of the City by preventing the corrupt practices described below. These acts endangered the health and safety of the citizens of the City of San Diego.

The City Council hereby finds the following facts to be true and correct and adopts the following conclusions and Debarment Bases:

**A. FINDING: SoCal committed corrupt practices involving the misuse of water.**

1. On December 17, 1999, SoCal was observed filling a water truck from a City of San Diego fire hydrant without a meter as required by Section 7-15 of the Sewer Group Job 647, Contract No. K99231C construction contract, City of San Diego Supplemental Amendments to the Standard Specifications for Public Works. The City notified SoCal that a properly registered, functional water meter was required.
2. On February 15, 2000, SoCal was observed filling a water truck from a City of San Diego fire hydrant without a meter as required by the Water and Sewer Group Job 464A, Contract No. K99257C. On that date, City staff verbally notified SoCal, and again on February 18, 2000, gave written notice to SoCal of the contract requirement that a water meter was necessary.
3. Again on Water and Sewer Group Job 464A, Contract No. K99257C, on April 13, 2000, SoCal used an inoperable water meter, Serial No. 91004201, which was confiscated by City staff and returned to the City of San Diego Water Department. This meter was registered to SoCal, but SoCal had reported it lost or stolen three months earlier.
4. On April 28, 2000, SoCal used an inoperable water meter Serial No. 88537360 on Water and Sewer Group Job 530A, Contract No. K99247C by connecting it to a City of San Diego fire hydrant. This meter had been reported lost or stolen by SoCal, and it was overdue for a reading. City staff again advised SoCal both verbally, and in writing, of the contract requirement that a water meter be properly registered.
5. On May 3, 2000, City staff checked the water meter SoCal was using on Sewer Group Job 636, Contract No. K99226C, and found that the meter, Serial No. 89542881, also had been reported lost or stolen by SoCal in December 1999.

**DEBARMENT BASIS A**

Based upon the findings described in Section II. A., the City Council concludes that SoCal has taken City water without paying for it, which constitutes corrupt practices. SoCal is debarred on this basis.

**B. FINDING: SoCal committed corrupt practices involving traffic control.**

1. On Water and Sewer Group Job 464A, Contract No. K99257C, SoCal began work in the public right-of-way without a required traffic control permit. SoCal disregarded three written violation notices dated January 12, 2000, January 31, 2000, and February 2, 2000, and continued to work without a traffic control permit thereby creating a threat to public health and safety.
2. On Water and Sewer Group Job 496, Contract No. K98088C, the City issued SoCal a traffic control violation notice on February 3, 2000, because SoCal failed to: A) install required traffic control devices which warn motorists of construction activities and guide them safely through a construction zone; B) provide continuous access for emergency vehicles and local traffic as required; C) remove construction debris from the right-of-way; and, D) cease work and exit the right-of-way during peak traffic hours as required by the traffic control permit.
3. On Water and Sewer Group Job 605, Contract No. K99238, SoCal failed to obtain a traffic control permit and on several occasions failed to implement proper traffic control. City staff issued written stop work or violation notices after observing this behavior on January 27, 2000, February 16, 2000, February 25, 2000, March 2, 2000, March 17, 2000, and May 23, 2000. On April 3, 2000, SoCal was cited by the San Diego Police Department for performing work in the right-of-way without a valid traffic control permit.
4. While performing work on Water and Sewer Group Job 464A, Contract No. K99257C, SoCal presented a traffic control permit to City staff. It was later determined that SoCal added a street to the previously approved traffic control permit to make it appear to cover SoCal's ongoing work.
5. Also on Water and Sewer Group Job 464A, Contract No. 99257C, SoCal presented another traffic control drawing which had admittedly been fabricated in order to convince City staff to allow SoCal to continue working in the right-of-way. On the traffic control drawing presented by SoCal, SoCal had cut an approval stamp from a different, approved drawing and pasted it on the unapproved drawing. SoCal later acknowledged to City staff that, in fact, they had modified the unapproved drawing to make it appear valid.

**DEBARMENT BASIS B**

Based upon the findings described in Section II. B., the City Council concludes that SoCal has falsified traffic control documents, and has repeatedly and



egregiously ignored their legal and contractual obligation to obtain traffic control permits prior to working in the right-of-way. These actions constitute corrupt practices, and SoCal is debarred based on these corrupt practices.

**C. FINDING: SoCal committed corrupt practices by submitting false claims for compensation not owed to them.**

1. SoCal submitted Daily Extra Work Reports [DEWRs] claiming inflated labor compensation rates. On Water and Sewer Group Jobs 464A, Contract No. K99257C; Water and Sewer Group Job 514, Contract No. K99218C; Water and Sewer Group Job 530A, Contract No. K99247C; and Sewer Group Job 636, Contract No. K99226C; Section 3-3.2.2 of all of these construction contracts, require SoCal to charge the City its actual labor costs. In fact, SoCal charged the City \$28.00 per hour for labor when SoCal's actual costs were less than \$11.00 per hour. Only after being confronted and receiving several written requests by the City did SoCal finally submit actual labor rates.
2. SoCal submitted several DEWRs to the City as a result of extra work performed by SoCal on Water and Sewer Group 464A, Contract No. 99257C. While evaluating these DEWRs, City staff noted a discrepancy regarding the model number and hourly rate for a backhoe. SoCal's DEWRs charged the hourly rate for a JD 510, \$22.67, which is greater than the hourly rate for a JD 310D, \$16.52. City staff took photographs of the backhoe in question which show both of the following: 1) the "3" in the standard 310D sticker on the side of the backhoe was removed and replaced with a "5," to make it look like a 510, and 2) inside the hood where the maintenance for this type of backhoe is located, the maintenance record indicated the backhoe was a 310D.
3. On Sewer and Water Group 605, Contract No. K99238, SoCal filed three workers' compensation claims against the City Water Department's Owner Controlled Insurance Program [OCIP]. Through independent investigation by the OCIP Risk Manager, Risk Management discovered that these workers were not assigned to the site on a full time basis and/or that the workers' injuries did not occur while performing work at the site as alleged by SoCal. In one of the cases, work on the job had been shut down at the date and time during which the injury was alleged to have occurred.

**DEBARMENT BASIS C**

Based upon the findings described in Section II. C., the City Council concludes that SoCal falsified DEWRs and workers compensation claims. SoCal is debarred

on the basis of these corrupt practices.

**D. FINDING: Miscellaneous Corrupt Practices.**

1. On Sewer Group 647, Contract No. K99231C, SoCal constructed new portions of the sidewalk and other improvements thereby implying the work had been completed, and that they had completed installation of sewer laterals. SoCal represented to City staff that the laterals had been replaced. Suspicious in light of SoCal's conduct in other regards, the City required SoCal to excavate to confirm that the laterals had been replaced. Excavation of one of the laterals revealed that SoCal did not replace the dilapidated sewer laterals. Before City staff could observe excavations of the other sewer laterals that were allegedly replaced, (the inspection was scheduled for Monday, December 20, 1999), SoCal performed unauthorized work over the weekend of December 18, 1999, and replaced those other sewer laterals which SoCal claimed to have replaced.
2. SoCal committed all of the following: on March 30, 2000, SoCal failed to adhere to City staff instructions to avoid impacting a concrete encased high voltage electric conduit; on March 31, 2000, SoCal told City staff that measurements revealed that work could be performed without impacting the concrete encased electric conduit. However, despite their representations, SoCal began chipping away at the concrete encased conduit with a large hydraulic chipping device attached to a backhoe. SoCal's chipping at the concrete damaged the electrical conduit and caused a power outage in the community. In addition, SoCal billed the City for additional work caused by the power outage.
3. In March 2000, SoCal provided late notice to residents that construction work would require that the residents avoid parking on the street on certain dates. The late notice SoCal provided failed to state necessary parking restrictions to prevent citizens from parking in the construction areas. As a result, one citizen's car was improperly towed at their expense.

**DEBARMENT BASIS D**

Based upon the findings described in Section II. D., the City Council concludes that SoCal deceitfully misrepresented that they replaced dilapidated sewer laterals when they had not; indicated they had taken required precautions to avoid damaging a high voltage electric conduit when they had not; and committed conduct not in conformance with the contracts and billing the City for their conduct. As a result of these corrupt practices, SoCal is debarred.

### **III. GENERAL CONCLUSION AND DEBARMENT BASIS NO. 5**

After review of the above facts, including the City Manager's Revised Report No. 01-068 and its attachments, all documents, the Administrative Record, all testimony, and evidence presented during the rehearing, the City Council finds that all of the above facts are true and correct.

SoCal is permanently debarred for corrupt practices on each separate and distinct basis described in Sections II. A. (1 - 5), II. B. (1 - 5), II. C. (1 - 3), and II. D. (1 - 5), and General Conclusion and Debarment Basis No. 5, each of which alone formulates a corrupt practice sufficient for permanent debarment. Additionally, all of this conduct when taken in totality represents a serious pattern of repeated, persistent, and frequent corrupt practices, which comprise Debarment Basis 5. SoCal is debarred for this cumulative pattern of corrupt practices.

## EXHIBIT "A"

### ALTERNATE FINDINGS

#### **THREE-YEAR DEBARMENT OF SOUTHERN CALIFORNIA UNDERGROUND CONTRACTORS, INC., ITS DIVISIONS, ORGANIZATIONAL ELEMENTS, ITS AFFILIATES, JIM CRAIG JACKSON AND GEORGE ROGERS FROST**

#### **I. INTRODUCTION**

The City Council, after review and consideration of all evidence, supports without reservation permanent debarment of SoCal. Although the City Council is certain that permanent debarment is warranted and proper, the City Council also adopted an alternate motion to impose a three year debarment in the event a reviewing court determined for any reason that permanent debarment was not warranted or proper. As reflected in the transcription of the debarment hearing, the alternate motion is an expression of the City Council's desire that SoCal should be debarred to the maximum intent allowed under the San Diego Municipal Code, and the findings and conclusions adopted support the maximum debarment allowed.

These Alternate Debarment Findings are hereby adopted by the Council of the City of San Diego in support of three-year debarment of Southern California Underground Contractors, Inc., its divisions, organizational elements, its Affiliates, Jim Craig Jackson and George Rogers Frost (These individuals, the corporate entity and each and every subpart will hereinafter be referred to as "SoCal").

These Alternate Debarment Findings are based upon the debarment rehearing; the City Manager's Revised Report No. 01-068 and its attachments; the Administrative Record; all testimony, and evidence submitted at the rehearing. Each of which, incorporated by this reference, sets forth five bases for debarment of SoCal. In addition, cumulatively the conduct reflects a pattern of violations of San Diego Municipal Code section 22.0803. This pattern is a fifth basis upon which SoCal is debarred.

#### **II. SOCIAL DEBARMENT FINDINGS**

San Diego Municipal Code section 22.0801, et seq., requires that debarment be imposed as a sanction only in the public interest for the City's protection and not for purposes of punishment. The City may declare that a bidder is ineligible to bid on City contracts for a period not to exceed three years for including, but not limited to, unsatisfactory

performance of contract, unjustified refusal to properly perform or complete contract work, unjustified failure to honor or observe contractual obligations or legal requirements pertaining to the contract. [SDMC § 22.0803]. Debarment is designed to protect the City by ensuring full and open competition by granting awards only to responsible contractors. The City Council may declare a contractor ineligible to bid on City contracts for a period not to exceed three years for any SDMC § 22.0803 reasons.

SoCal has committed conduct in violation of SDMC § 22.0803, as described in detail below. Each and every act, individually and jointly, is adequate ground(s) for debarment of SoCal under SDMC § 22.0803. The debarment of SoCal is in the public interest and for protection of the City by preventing the conduct described below. SoCal's acts endangered the health and safety of the citizens of the City of San Diego.

The City Council hereby finds the following facts to be true and correct and adopts the following conclusions and Debarment bases:

**A. FINDING: SoCal violated SDMC § 22.0803 by misusing water.**

1. On December 17, 1999, SoCal was observed filling a water truck from a City of San Diego fire hydrant without a meter as required by Section 7-15 of the Sewer Group Job 647, Contract No. K99231C construction contract, City of San Diego Supplemental Amendments to the Standard Specifications for Public Works. The City notified SoCal that a properly registered, functional water meter was required.
2. On February 15, 2000, SoCal was observed filling a water truck from a City of San Diego fire hydrant without a meter as required by the Water and Sewer Group Job 464A, Contract No. K99257C. On that date, City staff verbally notified SoCal, and again on February 18, 2000, gave written notice to SoCal of the contract requirement that a water meter was necessary.
3. Again on Water and Sewer Group Job 464A, Contract No. K99257C, on April 13, 2000, SoCal used an inoperable water meter, Serial No. 91004201, which was confiscated by City staff and returned to the City of San Diego Water Department. This meter was registered to SoCal, but SoCal had reported it lost or stolen three months earlier.
4. On April 28, 2000, SoCal used an inoperable water meter Serial No. 88537360 on Water and Sewer Group Job 530A, Contract No. K99247C by connecting it to a City of San Diego fire hydrant. This meter had been reported lost or stolen by SoCal, and it was overdue for a reading. City staff again advised SoCal both verbally, and in writing, of

the contract requirement that a water meter be properly registered.

5. On May 3, 2000, City staff checked the water meter SoCal was using on Sewer Group Job 636, Contract No. K99226C, and found that the meter, Serial No. 89542881, also had been reported lost or stolen by SoCal in December 1999.

#### **DEBARMENT BASIS NO. A**

Based upon the findings described in Section II. A., the City Council concludes that SoCal has taken City water without paying for it, which violates SDMC § 22.0803. SoCal is debarred on this basis.

#### **B. FINDING: SoCal violated SDMC § 22.0803 by committing traffic control misconduct.**

1. On Water and Sewer Group Job 464A, Contract No. K99257C, SoCal began work in the public right-of-way without a required traffic control permit. SoCal disregarded three written violation notices dated January 12, 2000, January 31, 2000, and February 2, 2000, and continued to work without a traffic control permit thereby creating a threat to public health and safety.
2. On Water and Sewer Group Job 496, Contract No. K98088C, the City issued SoCal a traffic control violation notice on February 3, 2000, because SoCal failed to: A) install required traffic control devices which warn motorists of construction activities and guide them safely through a construction zone; B) provide continuous access for emergency vehicles and local traffic as required; C) remove construction debris from the right-of-way; and, D) cease work and exit the right-of-way during peak traffic hours as required by the traffic control permit.
3. On Water and Sewer Group Job 605, Contract No. K99238, SoCal failed to obtain a traffic control permit and on several occasions failed to implement proper traffic control. City staff issued written stop work or violation notices after observing this behavior on January 27, 2000, February 16, 2000, February 25, 2000, March 2, 2000, March 17, 2000, and May 23, 2000. On April 3, 2000, SoCal was cited by the San Diego Police Department for performing work in the right-of-way without a valid traffic control permit.
4. While performing work on Water and Sewer Group Job 464A, Contract No. K99257C, SoCal presented a traffic control permit to City staff. It

was later determined that SoCal added a street to the previously approved traffic control permit to make it appear to cover SoCal's ongoing work.

5. Also on Water and Sewer Group Job 464A, Contract No. 99257C, SoCal presented another traffic control drawing which had admittedly been fabricated in order to convince City staff to allow SoCal to continue working in the right-of-way. On the traffic control drawing presented by SoCal, SoCal had cut an approval stamp from a different, approved drawing and pasted it on the unapproved drawing. SoCal later acknowledged to City staff that, in fact, they had modified the unapproved drawing to make it appear valid.

#### **DEBARMENT BASIS NO. B**

Based upon the findings described in Section II.B., the City Council concludes that SoCal has falsified traffic control documents, and has repeatedly and egregiously ignored their legal and contractual obligation to obtain traffic control permits prior to working in the right-of-way. These actions violate SDMC § 22.0803, and SoCal is debarred based on these corrupt practices.

#### **C. FINDING: SoCal committed conduct violating SDMC § 22.0803 by submitting false claims for compensation not owed to them.**

1. SoCal submitted Daily Extra Work Reports [DEWRs] claiming inflated labor compensation rates. On Water and Sewer Group Jobs 464A, Contract No. K99257C; Water and Sewer Group Job 514, Contract No. K99218C; Water and Sewer Group Job 530A, Contract No. K99247C; and Sewer Group Job 636, Contract No. K99226C; Section 3-3.2.2 of all of these construction contracts, require SoCal to charge the City its actual labor costs. In fact, SoCal charged the City \$28.00 per hour for labor when SoCal's actual costs were less than \$11.00 per hour. Only after being confronted and receiving several written requests by the City did SoCal finally submit actual labor rates.
2. SoCal submitted several DEWRs to the City as a result of extra work performed by SoCal on Water and Sewer Group 464A, Contract No. 99257C. While evaluating these DEWRs, City staff noted a discrepancy regarding the model number and hourly rate for a backhoe. SoCal's DEWRs charged the hourly rate for a JD 510, \$22.67, which is greater than the hourly rate for a JD 310D, \$16.52. City staff took photographs of the backhoe in question which show both of the following: 1) the "3" in the standard 310D sticker on the side of the backhoe was removed and replaced with a "5," to make it look like a 510, and 2) inside

the hood where the maintenance for this type of backhoe is located, the maintenance record indicated the backhoe was a 310D.

3. On Sewer and Water Group 605, Contract No. K99238, SoCal filed three workers' compensation claims against the City Water Department's Owner Controlled Insurance Program [OCIP]. Through independent investigation by the OCIP Risk Manager, Risk Management discovered that these workers were not assigned to the site on a full time basis and/or that the workers' injuries did not occur while performing work at the site as alleged by SoCal. In one of the cases, work on the job had been shut down at the date and time during which the injury was alleged to have occurred.

#### **DEBARMENT BASIS NO. C**

Based upon the findings described in Section II. C., the City Council concludes that SoCal falsified DEWRs and workers compensation claims. SoCal is debarred on the basis of these actions which violate SDMC § 22.0803.

#### **D. FINDING: Miscellaneous conduct which violates SDMC § 22.0803.**

1. On Sewer Group 647, Contract No. K99231C, SoCal constructed new portions of the sidewalk and other improvements thereby implying the work had been completed, and that they had completed installation of sewer laterals. SoCal represented to City staff that the laterals had been replaced. Suspicious in light of SoCal's conduct in other regards, the City required SoCal to excavate to confirm that the laterals had been replaced. Excavation of one of the laterals revealed that SoCal did not replace the dilapidated sewer laterals. Before City staff could observe excavations of the other sewer laterals that were allegedly replaced, (the inspection was scheduled for Monday, December 20, 1999), SoCal performed unauthorized work over the weekend of December 18, 1999, and replaced those other sewer laterals which SoCal claimed to have replaced.
2. SoCal committed all of the following: on March 30, 2000, SoCal failed to adhere to City staff instructions to avoid impacting a concrete encased high voltage electric conduit; on March 31, 2000, SoCal told City staff that measurements revealed that work could be performed without impacting the concrete encased electric conduit. However, despite their representations, SoCal began chipping away at the concrete encased conduit with a large hydraulic chipping device attached to a backhoe. SoCal's chipping at the concrete damaged the electrical conduit and caused a power outage in the community. In addition, SoCal billed the City for additional work caused by



the power outage.

3. In March 2000, SoCal provided late notice to residents that construction work would require that the residents avoid parking on the street on certain dates. The late notice SoCal provided failed to state necessary parking restrictions to prevent citizens from parking in the construction areas. As a result, one citizen's car was improperly towed at their expense.

**DEBARMENT BASIS NO. D**

Based upon the findings described in Section II.D., the City Council concludes that SoCal deceitfully misrepresented that they replaced dilapidated sewer laterals when they had not; indicated they had taken required precautions to avoid damaging a high voltage electric conduit when they had not; and committed conduct not in conformance with the contracts and billing the City for their conduct. As a result of these practices which are in violation of SDMC § 22.0803. SoCal is debarred.

**III. GENERAL CONCLUSION AND DEBARMENT BASIS NO. 5**

After review of the above facts, including the City Manager's Revised Report No. 01-068 and all its attachments, all documents, the Administrative Record, testimony, and evidence presented during the hearing, the City Council finds that all of the above facts are true and correct.

If for any reason a reviewing Court determines that the permanent debarment of SoCal is not warranted, SoCal is debarred for three years for violation of SDMC § 22.0803 on each separate and distinct basis described in Sections II. A. (1-5), II. B. (1-5), II. C. (1-3), and II. D. (1-3), each of which alone formulates a reason sufficient for debarment. Additionally, all of this conduct, when taken in totality, represents a serious pattern of conduct violating SDMC § 22.0803. Debarment Basis No. 5, which are repeated, persistent, and frequent. SoCal is debarred for this cumulative pattern of conduct.